

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

- - -

UNITED STATES OF AMERICA, . CASE NO. 1:12-CR-023  
Plaintiff, .  
- v - . *Sentencing*  
SYLVER GUNN, . Wednesday, August 8, 2012  
Defendant. . 10:00 a.m.  
Cincinnati, Ohio

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE HERMAN J. WEBER, SENIOR JUDGE

For the Plaintiff:

Anne L. Porter, Esq.  
Assistant United States Attorney  
United States Attorney's Office  
221 East Fourth Street, Suite 400  
Cincinnati, Ohio 45202

For the Defendant:

Richard J. Goldberg, Esq.  
Schuh & Goldberg, LLP  
2662 Madison Road  
Cincinnati, Ohio 45208

Also Present: Laura Jensen, U.S. Probation  
Katrina Tibbs, U.S. Pretrial Services

Law Clerk: Amy Peters Thomas, Esq.

Courtroom Deputy: Darlene Maury

Court Reporter: Maryann T. Maffia, RDR

1 P R O C E E D I N G S

2 (In open court at 10:00 a.m.)

3 THE COURT: Proceed, Miss Maury.

4 Please be seated.

5 COURTROOM DEPUTY: Judge, on the docket this morning  
6 is Criminal Action 12-23: *United States of America versus*  
7 *Sylver Gunn*.

8 Appearing on behalf of the government is Anne Porter,  
9 appearing on behalf of the defense is Richard Goldberg, and  
10 the defendant is present in the courtroom.

11 THE COURT: On a former day, the defendant entered a  
12 plea of guilty. After a hearing, the Court accepted that plea  
13 of guilty. As a result of the plea of guilty, it was my duty  
14 to find her guilty of: Count One, filing a false claim  
15 against the Internal Revenue Service in violation of Title 18  
16 Section 287 of the United States Code, a Class D felony; and  
17 Count Two, Theft of Government Funds in violation of Title 18  
18 Section 641 of the United States Code, a Class C felony.

19 Having tendered her plea of guilty, which was accepted,  
20 the defendant subjected herself to a sentence of imprisonment  
21 of five years on Count One, a fine of \$250,000.00,  
22 restitution, a special assessment, and supervised release. On  
23 Count Two, she subjected herself to a sentence of ten years, a  
24 fine of \$250,000.00, restitution, special assessment and  
25 supervised release.

1       However, the policy statements in United States Sentencing  
2 Guidelines 2B1.1, 2T1.4, 2T4.1, 3D1.1 and 3E1.1 are  
3 instructive in determining a sentence in this case that is  
4 sufficient but not greater than necessary to comply with the  
5 purposes set forth in Title 18 United States Code Section  
6 3553(a) .

7       The offense in Count One concluded on February 8th, 2010.  
8 The offense in Count Two concluded on December the 15th, 2010.  
9 The defendant entered a plea of guilty on April 5th, 2012.

10       The provisions of the Antiterrorism and Effective Death  
11 Penalty Act of 1996 apply because the commission of the  
12 offense occurred after April 24, 1996.

13       The application -- or the applicable *Sentencing Guideline*  
14 *Manual* is the November 1, 2011 edition.

15       The addendum to the Presentence Report discloses that no  
16 objections remain for resolution by the Court.

17       The Court has before it the Information, the elements of  
18 the charges, the Plea Agreement, the Statement of Facts and  
19 the Presentence Report that was filed on June 15th, 2012.

20       Has the United States received a copy of that report?

21             MS. PORTER: Yes, Your Honor.

22             THE COURT: Has the defense received a copy of the  
23 that report?

24             MR. GOLDBERG: Yes, Your Honor.

25             THE COURT: Miss Gunn, have you received a copy of

1 that report, read it and discussed it with your lawyer?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: The Court will accept the Presentence  
4 Report as part of the Information in this Court.

5 I have before it the United States Sentencing Memorandum.  
6 I have the defendant's Sentencing Memorandum, and that  
7 includes letters: one from the defendant; one from Mark  
8 Hernandez; one from Jason Wagner, one from Mark Stepaniak,  
9 S-T-E-P-A-N-I-A-K; a letter from Miss Blackshear; a letter  
10 from Zakiya R. McNeal; a letter from Douglas Eric Armstrong; a  
11 letter from Tynisha Alford; a letter from LaQuinta Gunn; a  
12 letter from Paul Joiner; and a letter that --

13 You're going to have to decipher that for me Mr. Goldberg,  
14 if you wish me to consider it.

15 MR. GOLDBERG: I will.

16 THE COURT: And a letter from Brandon Mins, M-I-N-S.  
17 And I have the Pretrial Service report.

18 This is the information that I have before me at this  
19 time.

20 Does the United States wish at this time to discuss the  
21 Sentencing Guidelines and my duty to determine their  
22 applicability in this case?

23 MS. PORTER: Yes, Your Honor.

24 THE COURT: Proceed.

25 MS. PORTER: Thank you.

1       Your Honor, our Sentencing Memorandum sets out our  
2 analysis of the 3553(a) factors --

3       (PHONE RINGING)

4       MS. PORTER: -- that the Court --

5       THE COURT: Now, please turn off your cell phones.  
6 The next cell phone I hear, if it rings, I am confiscating it,  
7 just so we understand each other.

8       Proceed.

9       MS. PORTER: Yes, Your Honor.

10       Our analysis of the factors set forth in 18 U.S. Code 3553  
11 is set forth in our Sentencing Memorandum in more detail.  
12 Today, I just wanted to address some key points with regard to  
13 our position at sentencing here today.

14       As we have stated in our Sentencing Memorandum, it's the  
15 position of the United States, and we concur with the  
16 Probation Department --

17       (PHONE RINGING)

18       THE COURT: Please pick up that telephone.  
19 Whose cell phone is it?

20       (No response)

21       THE COURT: I'll have to clear the courtroom if you  
22 don't give it to me.

23       (The Court Security Officer retrieved a cell phone from a  
24 man in the gallery of the courtroom.)

25       THE COURT: You keep custody of it at this time.

1 Proceed.

2 MS. PORTER: Yes, Your Honor.

3 Our position is concurring with the U.S. Probation Officer  
4 in her recommendation of a sentence of incarceration.

5 THE COURT: I'm not there yet, Miss Porter. I'm only  
6 on determining one element, which is the Guidelines.

7 MS. PORTER: Yes, Your Honor.

8 THE COURT: That's what I'm trying to determine at  
9 this time.

10 MS. PORTER: I see. Then we have nothing further at  
11 this time to add. Thank you.

12 THE COURT: Mr. Goldberg.

13 MR. GOLDBERG: Your Honor, there being no objections  
14 filed by us as to the Guideline calculation done by the  
15 Probation Department, we do concur in that calculation as it  
16 stands as to the Guidelines.

17 THE COURT: Miss Gunn, have you had an opportunity to  
18 discuss the applicability of the Guidelines to your case with  
19 your lawyer?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Have you any comment on the -- and you  
22 read the Presentence Report and the probation -- or the  
23 Presentence Report yet. Do you have anything you wish me to  
24 understand about the applicability of the Guidelines?

25 THE DEFENDANT: No, sir.

1           THE COURT: The Court adopts the findings of fact in  
2 the Presentence Report.

3           In Count One, the guideline for 18 United States Code  
4 Section 287 is found at U.S. Sentencing Guidelines 2B1.1.  
5 Pursuant to United States Sentencing Guideline 2B1.1(c)(3),  
6 the Cross Reference states that, "If the defendant was  
7 convicted under a statute proscribing false, fictitious or  
8 fraudulent statements or representations," pursuant to U.S.  
9 Sentencing Guidelines 2T1.1(F), a Base Offense Level of 16 is  
10 appropriate because the tax loss was more than \$80,000.00 but  
11 less than \$200,000.00.

12           Pursuant to United States Sentencing Guidelines at  
13 2T1.4(b)(1)(B), a two-level enhancement is appropriate because  
14 the defendant was in the business of preparing or assisting in  
15 the preparation of tax returns. The adjusted offense level is  
16 18.

17           In Count Two, a Base Offense Level of 6 is appropriate.  
18 Pursuant to United States Sentencing Guideline 2B1.1(b)(1)(C),  
19 a four-level enhancement is appropriate because the loss was  
20 more than \$10,000.00 but less than \$30,000.00. Pursuant to  
21 United States Sentencing Guideline 2B1.1(a)(2), the Offense  
22 Level is 10.

23           The Multiple Count Adjustment is that Group 1 adds a one  
24 unit, Group 2 adds a .5 unit. The total number of units are  
25 1.5.

1           The greater of the adjusted offense levels is 18 --

2           (Phone ringing)

3           THE COURT:   Now where is that?

4           (No response)

5           THE COURT:   I want that phone.   I'll clear the  
6 courtroom if I don't get it.

7           (No response)

8           THE COURT:   I'll clear the courtroom.   We'll recess.

9           COURTROOM DEPUTY:   All rise.   This Honorable Court is  
10 now in recess.

11          (A recess was taken at 10:20 a.m.   The courtroom was  
12 cleared except for the defendant, all counsel and court staff.  
13 The proceedings resumed at 10:25 a.m.)

14          THE COURT:   Please be seated.

15          Miss Gunn, this is a most serious incident in your life in  
16 your 27 years.   And I don't know whether they are your friends  
17 or foes, but I want you to understand that I am doing my very  
18 best to impose a sentence on you that is sufficient but not  
19 greater than necessary in view of all the facts that I have  
20 considered, and that's why I will not tolerate any  
21 distraction.   I'm doing the very best that I can for the  
22 government and for you in this matter.

23          So we'll proceed at this time.

24          The greater of the Adjusted Offense Levels is 18.   The  
25 increase in the Offense Level is one.   The Combined Adjusted



1 Offense Level is 19.

2 The defendant qualifies for a three-level reduction for  
3 acceptance of responsibility pursuant to United States  
4 Sentencing Guidelines 3E1.1(a) and (b).

5 The probation officer indicates that a downward departure  
6 may be warranted because the defendant's criminal history  
7 substantially overrepresents the seriousness of the  
8 defendant's criminal history or the likelihood that the  
9 defendant will commit other crimes. The Court agrees and  
10 finds that a Criminal History of I is more appropriate.

11 The only offenses for which the defendant received -- the  
12 only offenses for which the defendant received Criminal  
13 History points are contained in Paragraph 1: use of a stolen  
14 credit card. The facts of that case was that she was 18 years  
15 old, a lady left her credit card with her. When the lady  
16 returned to obtain it, the defendant said, "I don't know where  
17 it is."

18 That was your first serious mistake. Many others may have  
19 occurred prior, but that's the one I'm looking at.

20 Paragraph 52, theft of \$500.00 worth of merchandise;  
21 Paragraph 54, driving under suspension; and Paragraph 61,  
22 theft of a shirt.

23 In Paragraph 65, she received two points for committing  
24 the instant offense while under a criminal justice sentence,  
25 that is: probation for a Failure to Reinstate charge, for

1 which she received no points -- which she received no points.

2 These offenses are five to eight years old, starting when  
3 the defendant was 18.

4 The application of the Guidelines establish a 16 as a  
5 Total Offense Level; I is a Criminal History Category; and 21  
6 to 27 months is the sentencing range.

7 Pursuant to 18 United States Code Section 3561(a), the  
8 defendant is eligible for a term of probation of one to five  
9 years because the instant offense are Class D and C felonies.

10 Pursuant to United States Sentencing Guideline 5B1.1,  
11 probation is not authorized as the applicable guideline range  
12 is in Zone B of the sentencing table.

13 Pursuant to United States Sentencing Guidelines 5D1.2, a  
14 term of one to three years of supervised release is applicable  
15 on each count. Multiple terms of supervision must run  
16 concurrently.

17 Pursuant to United States Sentencing Guideline 5E1.2, the  
18 greater minimum fine in this case is \$5,000.00; the greatest  
19 maximum fine is \$50,000.00.

20 Pursuant to United States Sentencing Guideline 5E1.2(1),  
21 an additional fine amount of \$2,407.78 a month to pay the  
22 costs to the government of any imprisonment; \$2,180.27 a month  
23 for offenders in halfway houses; and \$286.11 a month to pay  
24 the costs to the government of supervised release must be  
25 considered.

1       The location monitoring program contains a variety of  
2 monitoring procedures based on case needs. The different  
3 technologies and daily costs include: voice recognition,  
4 \$1.88; radio frequency, \$3.18; passive GPS monitoring, \$4.74;  
5 and active GPS monitoring, \$8.95.

6       Restitution is owed.

7       Pursuant to the United States Sentencing Guidelines  
8 5E1.2(f), the Court finds that the defendant is not able to  
9 pay the minimum of the fine required and make restitution.  
10 Accordingly, the fine is waived.

11       Pursuant to United States Code Section 5E1.3, a special  
12 assessment of \$100 shall be ordered on each count, for a total  
13 of \$200.

14       The Plea Agreement does not provide for any sentence.

15       The Court recognizes that the Sentencing Guidelines are  
16 discretionary and it has the authority to depart upward or  
17 downward from the Guideline range established in this order  
18 and to sentence the defendant to any sentence under the  
19 statutory maximum.

20       In accordance with 18 United States Code Section  
21 3553(c)(1), the Court is not required to state a reason for  
22 imposing a sentence at a particular point within the range  
23 because the range in this case does not exceed 24 months.

24       Based upon the record in this case, including the  
25 information contained in the Presentence Report, the Court

1 accepts the Rule 11(c)(1)(B) Agreement, specifically finding  
2 that the Agreement adequately reflects the seriousness of the  
3 actual offense behavior and that accepting the Plea Agreement  
4 will not undermine the statutory purposes of sentencing.

5 That would conclude my discussion of the Sentencing  
6 Guidelines which is, of course, element number four of  
7 3553(a)(2).

8 Does the United States have anything they wish to add to  
9 the record at this time?

10 MS. PORTER: No, Your Honor.

11 THE COURT: Anything further along the Sentencing  
12 Guidelines?

13 MR. GOLDBERG: No, Your Honor.

14 THE COURT: Do you have any questions about how the  
15 Sentencing Guidelines apply to your case?

16 THE DEFENDANT: No, Your Honor.

17 THE COURT: The Court then will proceed to consider  
18 the 3553 factors and, in its wisdom or lack thereof, will  
19 fashion a sentence that, in its opinion, is sufficient but not  
20 necessarily -- is sufficient but necessary to adopt and  
21 fulfill its obligation to Congress.

22 So, at this time, Miss Porter, I will be glad to entertain  
23 further information.

24 MS. PORTER: Thank you, Your Honor.

25 Your Honor, in view of your determination with regard to

1 Miss Gunn's criminal history range, we still believe that a  
2 mid-Guideline range sentence is appropriate in this case,  
3 which would be, and we do recommend, a sentence of 24 months'  
4 incarceration based on the Court's findings here today.

5 Just briefly, in terms of history and characteristics of  
6 the defendant which, of course, are important under 3553(a),  
7 clearly the defendant has had difficult issues in her  
8 childhood. She's had issues with respect to problems growing  
9 up in a family with a mother who was a single mother who had a  
10 number of marriages, and that is expressed in the probation  
11 report as something that caused a lot of problems for the  
12 defendant; although it does appear that her mother is a  
13 supportive person to her, as well as are other family members  
14 who have indicated a willingness to help the defendant now.

15 In essence, no matter what sentence the Court imposes, her  
16 family has -- her brother and sister have expressed commitment  
17 to her, which is a very good thing.

18 She reports having experienced abuse as a teenager, which  
19 is something that is terrible. She is presently undergoing  
20 therapy at this time to deal with these issues. She is a  
21 single mother of two young sons.

22 However, balancing against those characteristics, Your  
23 Honor, this defendant has engaged in essentially a continuous  
24 pattern of violating the law. Many of these violations are  
25 relatively minor. Some are not so minor, as the Court has

1 noted, and relate to theft.

2 Something that is significant is the fact that Miss Gunn  
3 was on probation for one of her offenses at the time that she  
4 committed these serious federal offenses, and we believe that  
5 that is significant.

6 First of all, the federal offenses with which she is  
7 charged are two separate crimes and involve separate harms and  
8 separate frauds against the government. The government is  
9 still the victim. Being on probation while she committed  
10 these offenses clearly shows that she did not regard probation  
11 as significant. If she had, she surely would have been  
12 watching every step that she took so that she would make sure  
13 she was in compliance and not violating any law so that she  
14 could come off probation and get a fresh start. She did not  
15 do that.

16 It is a positive factor that she is engaging in a career  
17 which looks promising. However, that career was underway at  
18 the time she committed these federal crimes. It did not stop  
19 her or motivate her to not commit crime, and we believe that  
20 it's not a reason for her not to appropriately realize the  
21 consequences of her conduct in this case. Presumably, her  
22 career can still be engaged in after whatever sentence that  
23 the Court imposes.

24 Unfortunately, with regard to her two young sons,  
25 obviously the family and children of defendants always suffer

1 the consequences of the offense conduct, and they pay the  
2 price in many ways. As I mentioned, Miss Gunn's mother has  
3 indicated a willingness to help, and she has done that in the  
4 past, helped and taken over childcare obligations for Miss  
5 Gunn, so that appears to be something that's available here.

6 Finally, Your Honor, Miss Gunn expresses remorse which, of  
7 course, is something that goes to her credit. However, the  
8 remorse now is in light of consequences she is facing, and it  
9 does appear that she needs to realize the consequences of  
10 breaking the law. She has engaged in that over a significant  
11 course of time, and this sentence could mark, really, a new  
12 beginning for her where she starts fresh and she starts a life  
13 that is free of the court system once and for all.

14 So, Your Honor, for all those reasons, we recommend a  
15 sentence of 24 months. Thank you.

16 THE COURT: Mr. Goldberg. Proceed.

17 MR. GOLDBERG: Your Honor, I think I'll start at the  
18 end and then give my explanation of why I am requesting a  
19 sentence in the alternative.

20 If the Court would depart three levels down, we would end  
21 up in Zone C of the Guidelines. I believe, if I'm not  
22 mistaken, a sentence in Zone C can be satisfied by a  
23 combination of perhaps a halfway house commitment as well as  
24 electronically-monitored time.

25 In the alternative, if the Court deems fit not to grant a

1 probationary sentence, I would ask Your Honor to consider a  
2 sentence of no greater than a year and day of incarceration.

3 So I'll work a little backwards from that now.

4 This case, Your Honor, as you're well aware, involves  
5 really a taking of approximately \$18,000.00 from the  
6 government Section 8 rental subsidies and -- so a little over  
7 \$100,000.00 as a result of doing tax returns and fraudulently  
8 doing those returns to benefit the so-called taxpayers, with  
9 her receiving a fee for doing this.

10 It's not the typical case where you have a dishonesty-type  
11 offense where somebody is embezzling from a bank or an  
12 employer where they're taking it, they're receiving all the  
13 proceeds that they're stealing with their hand in the cookie  
14 jar and living a lavish lifestyle.

15 In this case, although she is totally responsible for all  
16 the money lost by the government, she didn't receive the  
17 benefits of all that money. It's probably less than half or  
18 considerably less than half in terms, especially with respect  
19 to the tax returns, because the taxpayers supposedly received  
20 those refunds they were not entitled to. She is responsible  
21 for repayment of those funds to the government.

22 I do want to point out, again, unlike the typical case or  
23 a case that this Court sees where you have a theft offense or  
24 embezzling type of offense where there is tens and hundreds of  
25 thousands of dollars taken, for example, from an unknowing



1 employer and the person oftentimes gets caught by an audit or  
2 something happened to catch them and stop them, the tax  
3 returns were stopped. She stopped doing them in 2010. So  
4 it's not like she got caught and stopped. She stopped doing  
5 her crime in 2010, although the Section 8 was ongoing to some  
6 extent. The Section 8 that the \$18,000.00 occurred as a  
7 result of her receiving \$20,000.00 from a person, deposited in  
8 her bank account. Obviously, she wasn't eligible for rental  
9 subsidies.

10 Miss Gunn did not receive tens and tens and tens of  
11 thousands of dollars that she lived lavishly on by buying cars  
12 or taking vacations or doing that sort of thing that  
13 oftentimes dishonest people or greedy people do, so it's a  
14 little bit out of the ordinary in that respect.

15 She understands her obligation to pay every cent back to  
16 the government. She has from day one. She has accepted  
17 responsibility from day one. She doesn't have the resources  
18 to make a big dent in it. And, frankly, Judge, I have now  
19 only \$3,000.00 in my trust account that she has given me that  
20 we've assigned towards restitution subject to the orders of  
21 the Court and the probation --

22 THE COURT: Has the \$200 been paid?

23 MR. GOLDBERG: That's been paid. The \$200 has been  
24 paid.

25 THE COURT: All right.

1           MR. GOLDBERG: I have 3,000.00. It's a drop in the  
2 bucket, but -- if she had the money, she'd pay it. If her  
3 family and friends had the money, they'd pay it.

4           And, for whatever it's worth -- and if it's not proper,  
5 this Court will stop me -- I took her representation on a  
6 reduced-fee basis because, under the circumstances, I thought  
7 this was a case I could handle on a reduced-fee basis. So  
8 it's not like she's hired counsel and spent a lot of this  
9 money that could have gone to restitution and she's paying  
10 lawyers for that. I'm not sure it's appropriate to say that,  
11 but I bring that up for whatever it's worth, if anything.

12           I ask the Court to consider departing the three levels I  
13 suggest from where we end up on the Guidelines based upon her  
14 background. There were suggestions in the Presentence Report  
15 that indicate that may warrant the variance or departure from  
16 the Guidelines. Miss Porter has alluded to some of those.

17           She was raised with a mother that's had seven husbands,  
18 many boyfriends, that -- and none of this is an excuse,  
19 obviously, but it just goes into her chaotic childhood,  
20 really. She was sexually molested by her stepfather. She  
21 was almost raped by a merchant or a storekeeper when she was  
22 younger.

23           She has two children. They are well-adjusted. Her older  
24 son is in school. I think he's going in the fourth grade.  
25 He's been an honor student, had perfect attendance last year.

1 She's doing the best she can to take good care of them despite  
2 the fact that the fathers of each of those children are not  
3 providing financial support; they are both in prison and have  
4 been incarcerated, and they don't provide the paternal support  
5 that these boys are entitled to.

6 She has the situation as a result of this predicament and  
7 everything in her background, she's been in a depressive  
8 state. She's been going to counseling. As you note from the  
9 pretrial report, she has been totally compliant. She is  
10 dealing with the issue of her alcohol and marijuana abuse  
11 previously. All of her urines have been clean. She is in  
12 counseling for depression. I think these are small, but they  
13 are steps in the right direction, as is the \$3,000.00. It's  
14 very small, but it's a step. And you have to start somewhere.

15 She is 28 -- almost 28 years old. I think she'll be 28 in  
16 a month or two. Most of her problems were minor brushes with  
17 the law, as the Court noted, were when she was younger. I  
18 think she has got some more maturity.

19 She is working part-time. I'm not sure -- recently she  
20 obtained a part-time job at a company called Queen City  
21 Jewelry. Again, not much. She is still concentrating on her  
22 career, which is promising. I think that's indicated in the  
23 Presentence Report and from some of the letters you've seen.  
24 She is promising. The Court and Pretrial have allowed her to  
25 go on a tour. She made a little bit of money. She never got

1 paid very much for her performances, but every little bit  
2 helps in coming up with the restitution and being able to  
3 support her two boys.

4 She has very good support from her family and friends,  
5 some of which are here today.

6 And I apologize on her behalf for the disruption in the  
7 courtroom.

8 Again, she will pay back every single dollar; and the  
9 earlier she has a chance to continue to work on that, she  
10 will.

11 I believe she is sincere and that she wants to lead a good  
12 law-abiding life. Perhaps good things will come with her  
13 career, and perhaps not. And she recognizes that.

14 The most important thing in Sylver's life now is really  
15 not her career, it's her boys and taking care of them. They  
16 were here in the court today. They were in the courtroom.  
17 They are well-mannered and have been raised properly despite  
18 the circumstances of Miss Gunn's upbringing.

19 Again, none of this is an excuse for her criminal  
20 behavior. She is remorseful, and not because she was caught.  
21 She stopped, Judge. She recognizes her debt to society. She  
22 recognizes her debt to the government as far as the money she  
23 owes.

24 I would ask Your Honor to consider a probationary sentence  
25 -- if the Court would depart downward to that level, that

1 would allow that -- or as I said, at worst, perhaps consider a  
2 sentence of a year and a day at the most. I think either of  
3 those sentences would be sufficient but not greater than  
4 necessary to accomplish the principles of the federal  
5 sentencing embodied in 18 U.S. Code 3553.

6 Thank you.

7 THE COURT: Miss Gunn, do you have anything you would  
8 like to say in mitigation or aggravation of sentence?

9 THE DEFENDANT: I would just like to apologize to the  
10 United States, to my children and to all the people that look  
11 up to me now. For this to come up is real embarrassing and  
12 just something hard to deal with. I spent --

13 THE COURT: Take your time. It's all right. Just  
14 take your time.

15 THE DEFENDANT: I spent a lot of nights without  
16 sleeping because I think about this all the time. And I'm a  
17 strong person. I know that I can make it through a lot of  
18 stuff because I've already been through a lot in my life.  
19 What hurt me the most is my mistakes, you know, going to  
20 affect my kids more than anything.

21 I just really want the opportunity to pay the money back,  
22 and I want -- when I committed this crime, I really wasn't  
23 aware of exactly what I was doing that, like, I was committing  
24 a federal crime and stuff. And I know, like, in the -- my  
25 generation right now, that is something popular that a lot of

1 people are doing. I just want to be able to, you know, show  
2 them that what can happen to you, what -- who-all you can  
3 hurt. Because, like my mother, she is a taxpayer. I'm taking  
4 money from my mother. You can hurt a lot of people, and  
5 people really don't understand that. And I want people to  
6 know how serious the crime is so they won't have the  
7 opportunity to mess up as I did.

8 But I just truly am sorry, and not because I got caught  
9 but because I was wrong. I shouldn't have did it. It's  
10 something that I really shouldn't have did, and I was -- you  
11 know, it's just something I shouldn't have did. I just  
12 apologize to, you know, the United States, this courtroom, to  
13 everyone that I hurt and, more importantly, my kids.

14 That's all.

15 THE COURT: Anything that you wish to add, Miss  
16 Porter?

17 MS. PORTER: No, Your Honor.

18 THE COURT: You're well aware of your history. I  
19 also am well aware that you are a single parent. You  
20 evidently have made some very, very poor choices in your life  
21 up to this point in time.

22 One factor that I must consider is the nature and  
23 circumstances of this offense.

24 Oliver Wendell Holmes said a long time ago that when you  
25 deal with the government, the United States of America that

1 supports you and me and protects us, that you must deal on the  
2 square. You didn't. So these are very serious offenses, even  
3 though they are classified as C and D.

4 Your history and characteristics. You have had to undergo  
5 a number of circumstances that a lesser person than you would  
6 not have succeeded as well as you have. It is interesting  
7 that it's suggested that I put your children in the same  
8 environment that you grew up in. I am not willing to do that.  
9 I am not willing to put your kids where you sat.

10 You seem to have been raising these children in a proper  
11 fashion even though you have not had any support from their  
12 fathers, who are in prison; and yet, you have given these  
13 children a chance to live a law-abiding life and to succeed,  
14 and that is very important to me.

15 From your letter, I understood that you were shocked and  
16 surprised that you were in this courtroom. And you know from  
17 the street that when you get into this court, you go to jail.  
18 You know that.

19 THE DEFENDANT: Yes.

20 THE COURT: And, therefore, you tried to avoid a  
21 federal crime, and you have. As far as I know, the crimes  
22 that have been committed in the past have been those that I  
23 have enumerated here in the record. You know that when you  
24 come into this court you go to jail, and that's why you wanted  
25 to avoid it.

1           It is my duty to place a sentence against you that  
2 reflects the seriousness of the offense, to promote respect  
3 for the law. And, evidently, you have acquired that respect  
4 at this point in time.

5           And I must provide just punishment for this offense, but  
6 it has to be not greater than necessary.

7           I must avoid adequate deterrence to criminal conduct.  
8 Evidently, the practice that you instituted in your income tax  
9 career is widespread and causing a great deal of trouble. And  
10 I ask myself, "I wonder how many others are ripping off the  
11 housing rules and regulations?" And if too many people do  
12 that, they'll no longer exist. Congress will take that away  
13 from all of us.

14           So I want you to understand how important the conduct that  
15 you perpetrated here and pled guilty to is to many people that  
16 you don't even know.

17           To protect from further crimes that you may commit. Well,  
18 you've demonstrated, at least in the last several years, that  
19 you are not going to further commit any criminal offense.  
20 Certainly these misdemeanor offenses are in the past. I think  
21 these are at least five to eight years in the past. You were  
22 using marijuana, but you've stopped that. You were under some  
23 strain, I understand.

24           But I am convinced that, given the opportunity, you will  
25 not commit other federal crimes. If you do, this case will be



1 on your record, and you will go. You will have no choice but  
2 to go to the penitentiary or custody situations.

3 To me, one of the most important elements in this case is  
4 that we must provide you with needed educational --

5 You do have a GED?

6 THE DEFENDANT: Yes.

7 THE COURT: Vocational training. You are pursuing a  
8 career with an opportunity for success, but you do need  
9 medical care and you do need correctional treatment. My job  
10 is to provide you medical care and correctional treatment in  
11 the most effective manner. We have started on that with  
12 IKRON, and we can continue to monitor that.

13 I must consider the sentences available to me. As far as  
14 I'm concerned, I have all the sentences that the Congress has  
15 allowed me in your case.

16 I have to consider the Sentencing Guidelines. I have  
17 considered them, and the maximum there would be 24 months.

18 I need to avoid under unwarranted sentencing disparity  
19 among defendants with similar records who have been found  
20 guilty of similar conduct. I know that the Guidelines  
21 generally give me that information. However, in your case, I  
22 find some unique situations, particularly the apparent talent  
23 you have that will permit you, maybe, to earn substantial  
24 rewards, financially and otherwise.

25 Seven. I've got to provide for restitution to any

1 victims, and your talent gives me hope that you can reimburse  
2 the United States of this money. From the letters I've  
3 received, there are those that feel that you can produce  
4 substantial income. I'm sure that's their main interest in  
5 you.

6 Now, as I've said, I've been impressed with your  
7 dedication to your children, and to your -- to yourself,  
8 because a lesser person would not be in the condition and the  
9 situation that you are in today, and certainly would not have  
10 the opportunity of a possible successful career in the music  
11 industry. I'm impressed that you write your songs. I'm  
12 impressed that at 13 you wrote a poem. I'm not so happy with  
13 the content of some of your poems -- neither are you -- but I  
14 am impressed that you have this gift.

15 So I've taken all those things into consideration in  
16 making my judgment in this case.

17 At this time, does the United States have anything they  
18 wish to add at the point on the 3553 factors?

19 MS. PORTER: No, Your Honor.

20 THE COURT: Mr. Goldberg?

21 MR. GOLDBERG: No, Your Honor.

22 THE COURT: Do you have anything further you wish to  
23 add as far as the 3355 factors are concerned? I will consider  
24 whatever you have to say.

25 THE DEFENDANT: No, Your Honor.

1           THE COURT: The Court then will summarize its  
2 conclusion as to the results of the 3553 factors. This is not  
3 the sentence; this is my determination, my conclusion after  
4 I've considered my obligation under that statute.

5           In the Presentence Report, the probation officer suggests  
6 a variance may be appropriate in this case based on the  
7 defendant's chaotic childhood, including possible sexual abuse  
8 and insecurity in the midst of constant upheavals. The  
9 information in the Presentence Report discloses that the  
10 defendant was hospitalized by psychological problems and an  
11 attempted suicide as a teenager. She did not receive  
12 continuing treatment and has suffered an ongoing, untreated  
13 depression.

14           She has recently sought treatment and had some success  
15 with the development of a new career. Letters support her  
16 hard work and dedication.

17           Information in the Presentence Report and other evidence  
18 submitted to the Court supports a finding that she has been a  
19 good caregiver to her children and that she is the only parent  
20 present in their lives.

21           She has done charity work.

22           She is now receiving treatment in IKRON. This will allow  
23 her to continue to support her children and be more fully  
24 capable of making restitution.

25           This is also less costly to the government than

1 imprisonment, for a full term imprisonment.

2       So I am saying to you that I am considering a variance  
3 from the Sentencing Guidelines as far as the imprisonment is  
4 concerned. In other words, I'm going to give you the  
5 opportunity to prove what you said to me: that you're going  
6 to make restitution, that you're going to be a successful  
7 musician, that you're going to be a successful mother.

8       And I guaranty you that if you are not, then you will  
9 still face a substantial sentence in this federal court.

10       Therefore, I have determined that a sentence of probation  
11 of five years with 21 months' home detention takes into  
12 account the provisions of 18 U.S.C. Section 3553(a)(1), which  
13 includes the nature and circumstances of the offense and the  
14 defendant's criminal history.

15       A sentence of probation of five years with 21 months' home  
16 detention also reflects the seriousness of the offense,  
17 promotes respect for the law and provides just punishment,  
18 which is consistent with the provisions of 18 U.S.C. Section  
19 3553(a)(a) by serving as a deterrence, protecting the  
20 community, and providing you with needed educational or  
21 vocational training and, particularly, medical care and other  
22 correctional treatment in the most effective manner.

23       As stated in 18 United States Code Section 3553(a)(3), the  
24 available sentences have been considered. A sentence of  
25 probation of five years with 21 months' home detention is

1 within the scope of sentences available to this Court.

2 The sentence avoids unwarranted disparity among defendants  
3 who commit similar offenses but who have funds for restitution  
4 and have similar backgrounds, as mandated by 18 U.S.C. Section  
5 3553(a)(4)(5) and (6).

6 Since the defendant must pay restitution, the provisions  
7 of 18 United States Code Section 3553(a)(7) will apply, and I  
8 am using that as one of the more important elements in my  
9 decision.

10 This would end my reasons.

11 Does the United States have any additional comment for the  
12 record before we go into the sentencing portion?

13 MS. PORTER: No, Your Honor.

14 THE COURT: Mr. Goldberg?

15 MR. GOLDBERG: No sir.

16 THE COURT: Do you have any questions about what I'm  
17 about to do and what I have done?

18 THE DEFENDANT: No, Your Honor.

19 THE COURT: Do you have any questions about the  
20 proceedings or any questions of Mr. Goldberg that you wish to  
21 bring to our attention at this time?

22 THE DEFENDANT: No, Your Honor.

23 THE COURT: Do you have anything further to say as to  
24 why the judgment of this Court should not be imposed upon you  
25 at this time?

1           THE DEFENDANT: No, Your Honor.

2           MR. GOLDBERG: No, Your Honor.

3           THE COURT: It is the judgment of this Court that you  
4 be placed on probation for a period of five years on each of  
5 Counts One and Two to run concurrently under the following  
6 conditions:

7           You shall not commit another federal, state or local  
8 crime. Remember your traffic violations.

9           You are prohibited from possessing a firearm or other  
10 dangerous weapon.

11          You shall participate in the home detention component of  
12 the location monitoring program for a period of 21 months.

13          You are required to remain at your residence unless given  
14 permission in advance by the probation officer for approved  
15 activities.

16          You shall be monitored by the use of voice recognition at  
17 the discretion of the probation officer.

18          You shall abide by all the requirements established by the  
19 Probation Office related to the use of this location  
20 monitoring technology.

21          You shall pay all or part of the cost of location  
22 monitoring based on your ability to pay as determined by the  
23 probation officer. The cost of electronic monitoring is  
24 \$1.88 a day.

25          You shall submit to one drug test within 15 days of

1 beginning this supervision and at least two periodic drug  
2 tests thereafter.

3 You shall continue treatment at IKRON.

4 You shall cooperate in the collection of DNA as directed  
5 by your probation officer.

6 You shall make payments on the balance due on your  
7 criminal monetary penalties.

8 You shall provide the probation officer access to any  
9 requested financial records, including business records, and  
10 you shall not incur any new credit charges or open any  
11 additional lines of credit without the approval of the  
12 probation officer.

13 Additionally, there are 13 conditions that are required of  
14 all persons who serve a period of supervised release or  
15 probation under an order of this Court. They are in writing  
16 and will be explained to you by Probation or probation  
17 officer.

18 There is one that I wish to discuss with you: Eight. You  
19 shall not frequent places where controlled substances are  
20 illegally sold, used, distributed or administered. So that  
21 will be one thing you will have to be extremely cautious of  
22 when you enter into your singing career. It is my intent that  
23 you continue your singing career. However, if you knowingly  
24 go into a place knowing where this activity occurs, you may  
25 violate the terms of your probation.

1           Now, do you understand -- no, no. Now, just please be  
2           seated. Do you understand that if you violate these terms or  
3           any of these terms --

4           THE DEFENDANT: Yes.

5           THE COURT: -- you can be brought back into a federal  
6           court, particularly this one, and you will be sentenced to  
7           incarceration? Do you understand?

8           THE DEFENDANT: Yes, sir.

9           THE COURT: Now, you may leave this room and say,  
10          "Oh, boy, I pulled the wool over that guy like I did so many  
11          people in the past." If you do, you're doing yourself a great  
12          disservice because you'll never succeed probation, and you'll  
13          do a great disservice to defendants who appear before this  
14          judge later who will not be given the opportunity of  
15          probation, just as you may have caused certain people who  
16          deserve housing not to receive it or people who deserve  
17          refunds on tax returns not to receive them.

18          I've put a lot on your shoulders, but I'm hopeful that  
19          you'll continue to take care of your children, continue your  
20          career, pay restitution, and live the life that you are  
21          capable of.

22          Now, in addition, there is a special assessment of \$200,  
23          which has been paid, and there is restitution in the amount of  
24          \$118,586.00 as follows:

25          \$18,299.00 to the Cincinnati Metropolitan Housing



1 Authority, 1635 Western Avenue, Cincinnati, Ohio 45214. That  
2 is owed;

3 And \$100,287.00 to the Internal Revenue Service, Attention  
4 MPU, STOP 151, (Restitution), Post Office Box 47-421,  
5 Doraville, Georgia 30362.

6 Having assessed the defendant's ability to pay, payment of  
7 the total monetary penalty will be due as follows. The \$200  
8 is due immediately.

9 Within 30 days of the commencement of the term of  
10 probation, the probation officer shall recommend a payment  
11 schedule to the Court to satisfy the unpaid balance of all the  
12 criminal penalties pursuant to a payment schedule to be  
13 entered by the Court. This schedule shall only be changed by  
14 order of the Court, and of course I expect the \$3,000.00 to be  
15 paid today.

16 MR. GOLDBERG: Yes

17 THE COURT: Do you have any questions about this  
18 sentence?

19 THE DEFENDANT: No, sir.

20 THE COURT: Mr. Goldberg, anything further you wish  
21 to add to the record?

22 MR. GOLDBERG: No, Your Honor.

23 THE COURT: Miss Porter?

24 MS. PORTER: No, Your Honor.

25 THE COURT: Any questions? Now is the time to ask

1 them. Do you have any questions about the proceedings or  
2 anything that has gone on or about the situation? In other  
3 words, you are under a rather restrictive lifestyle for the  
4 next five years, and it's designed to help you and give you  
5 the guidance that you have not had through most of your life.  
6 That's what it's there for. And I find that that medical care  
7 and that correctional treatment is the way to provide you the  
8 services in the most effective manner.

9 Any questions? Go ahead, ask Mr. Goldberg if you're  
10 afraid of asking me a question.

11 (The defendant and Mr. Goldberg confer privately.)

12 THE DEFENDANT: No, sir, I have no questions.

13 THE COURT: I notify you that you have a right to  
14 appeal this sentence under certain circumstances. If you are  
15 unable to pay the cost of an appeal, you have the right to  
16 apply to this Court for leave to proceed *in forma pauperis*.  
17 If you are indigent and cannot retain a lawyer, you may apply  
18 and one will be appointed to represent you on your appeal.

19 You are further advised that, in accordance with the  
20 provisions of Rule 4(b) of the Rules of Appellate Procedure,  
21 you must file your notice of appeal with the Clerk of the  
22 United States District Court within 14 days of the filing of  
23 the judgment, which will be filed probably later today, August  
24 the 8th, 2012.

25 Fourteen calendar days from the filing of the judgment

1 will be August the 22nd, 2012.

2 I advise you that if you request, I'll order the Clerk of  
3 Courts to prepare and file your notice of appeal on your  
4 behalf.

5 It is further ordered that you shall notify the United  
6 States Attorney of the Southern District of Ohio within 30  
7 days of any change in residence or mailing address until all  
8 fines, restitutions, costs and special assessments imposed by  
9 this judgment are fully paid.

10 Do you have any questions about anything that's gone on  
11 here today?

12 THE DEFENDANT: No, sir.

13 THE COURT: Mr. Goldberg, will you protect the  
14 defendant's right to appeal if she chooses to do so? And,  
15 remember, only the Circuit Court can release you from that  
16 obligation.

17 MR. GOLDBERG: Yes, I will, Your Honor.

18 THE COURT: Is there anything further from the United  
19 States?

20 MS. PORTER: No, Your Honor.

21 THE COURT: Anything further?

22 MR. GOLDBERG: No, Your Honor.

23 THE COURT: Last time. Any questions?

24 THE DEFENDANT: No, sir.

25 THE COURT: So be it.

1                   COURTROOM DEPUTY: All rise. This Honorable Court is  
2 now adjourned.

3                   (The proceedings concluded at 11:10 a.m.)  
4  
5  
6  
7  
8  
9

10                   C E R T I F I C A T E  
11

12                   I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM  
13 THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.  
14

15 S/MARYANN T. MAFFIA, RDR

16 Official Court Reporter  
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